



POLICE DEPARTMENT

August 8, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Corey Fenley
Tax Registry No. 932630
Highway District
Disciplinary Case No. 2012-6944

The above-named member of the Department appeared before me on June 11, 2013, charged with the following:

1. Said Police Officer Corey Fenley, assigned to Highway #2, on or about October 18, 2011, while on-duty, was unprepared at the Brooklyn South Traffic Violations Bureau, to wit: while present to provide testimony on summonses said Police Officer issued, said Police Officer failed to bring copies of the summonses he issued and his applicable Department issued memo book, resulting in the dismissal of nine (9) summonses for seven (7) motorists. (*As amended*)

P.G. 211-01, Page 2, Paragraph 11 DUTIES AND CONDUCT IN COURT

2. Said Police Officer Corey Fenley, assigned to Highway # 2, on or about November 6, 2010, while on-duty, failed to make complete entries regarding the details of a summons in his Department issued memo book, as required.

P.G. 212-08, Page 1, Paragraph 1 – ACTIVITY LOGS

P.G. 209-09, Page 3, Paragraph 19 – PERSONAL SERVICE OF SUMMONSES
RETURNABLE TO TRAFFIC VIOLATIONS
BUREAU OR CRIMINAL COURT

The Department was represented by Lauren Fox, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 1, and the Department made a motion to dismiss Specification No. 2. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty of Specification No. 1. The Department's motion to dismiss Specification No. 2 is granted.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Thomas Garrity and Detective Gaetano Competiello as witnesses.

Sergeant Thomas Garrity

Garrity, a nine-year member of the Department currently assigned to Internal Affairs Bureau (IAB) Group 31, worked in the Court Monitoring Unit in 2011. His duties as court monitor consisted of logging police officers in and out on the computer, making sure officers were present for court, and watching officer testimony. On conclusion of their testimony, officers reported back to Garrity, and he would provide them with court slips as proof that they appeared. In addition to such responsibilities, Garrity reviewed the dispositions of the cases. According to his testimony, the types of things Garrity looked for while reviewing dispositions was whether there had been a "Not

guilty” verdict resulting from an officer’s testimony, or if a case was dismissed because an officer failed to testify.

On October 18, 2011 Garrity was assigned as the administrative sergeant in the Court Monitoring Unit for Brooklyn South from 7:25 a.m. to 4:00 p.m. At some point while working at the Traffic Violations Bureau (TVB) that day Garrity logged Respondent into the computer system and assigned him to his designated court room. When Respondent returned following his court appearance, Garrity logged him out of the computer system. In reviewing Respondent’s court slip he noticed that several cases had been dismissed. Garrity inquired what had happened. Respondent explained that he had brought the wrong packet of summonses. Garrity stated that the summonses Respondent had brought were from a prior court appearance on October 4, 2011. Garrity photocopied the October 4, 2011 summonses and the docket, then he completed worksheets on the matter.

Garrity testified that thereafter he made a call to the IAB Command Center, and reported that several of Respondent’s cases had been dismissed because he had brought the wrong summonses. Garrity explained his actions were in accordance with the standard operating procedure, and that he does not have the discretion to decide whether or not to make a call to IAB when a number of summonses are dismissed due to an officer’s unpreparedness.

The following morning, Garrity reviewed Respondent’s TVB testimony. Garrity heard the judge call a motorist’s name, which was followed by Respondent’s statement that he did not have the summons. According to Garrity, after a couple of summonses had been called, Respondent started to ask for adjournments. He did not recall whether

adjournments were granted when requested. Garrity did not recall doing anything else with respect to Respondent's case.

[Department's Exhibit (DX) 1 is a transcript of Respondent's TVB testimony, showing that the judge dismissed cases after Respondent requested adjournments. DX 2 is a copy of Respondent's court slip, indicating that nine of 19 summonses that Respondent went to court for that day were categorized as "D8," meaning dismissed. Respondent logged in at TVB at 12:42 p.m. and logged out at 2:07 p.m. DX 3 is the worksheet that Garrity prepared about Respondent's TVB appearance that day.]

On cross-examination, Garrity confirmed that there is no prosecuting attorney at TVB and officers are responsible for bringing their own paperwork. Garrity indicated that dismissals are common in TVB. Garrity's testimony suggested that from his experience, it is not uncommon for a motorist with multiple pending tickets to be found guilty of just one due to judicial discretion. The disposition D8 on a court slip indicated that a case was dismissed due to an officer's unpreparedness. When an unprepared officer asked for and received an adjournment, a notification to IAB was not necessary. Garrity was only concerned with cases that actually got dismissed. He confirmed that the process had a lot to do with the judge's discretion. Garrity explained, using a hypothetical, that if a judge were to adjourn all 10 cases in which an officer forgot to bring paperwork to court, no notification to IAB would be made. In contrast, if an officer came with 20 summonses and forgot one and as a result a case was dismissed, a notification would have to be made.

Garrity affirmed that Respondent testified at TVB at around 1:00 p.m. and, had signed in around 12:45 p.m. for the 1:00 p.m. court session. Garrity spoke about how

sometimes officers are notified to be in Criminal Court and TVB on the same day. When asked if Criminal Court takes precedent over TVB, Garrity replied that it would depend on the situation and that he could not say which court would take precedent. He indicated that when an officer did not show up for TVB he would have to make a report to IAB. Garrity stated that an officer's absence from a court date is not necessarily misconduct, but rather is determined on a case by case basis. When a valid excuse exists, an absence would not be considered misconduct.

On redirect examination, Garrity confirmed that he had a conversation with Respondent after he noticed the D8 dispositions on the court slip. Respondent told Garrity that "he had to go from one court appearance to another, he went back to his command, and he had his summonses broken down by date of appearance, and he brought the wrong packet."

Detective Gaetano Competiello

Competiello, a 16-year member of the Department currently assigned to IAB Group 34, participated in the official Department interview of Respondent. Respondent stated in the interview that he brought the wrong packet of summonses with him to TVB because he mistakenly took the wrong packet and failed to review it before leaving his command. As a result, the allegations against Respondent for being unprepared were substantiated.

On cross-examination, Competiello confirmed that Respondent was in Criminal Court prior to going to TVB. Competiello's agreed that it was possible for an officer to receive conflicting notifications for court. When asked what if Respondent had been

required to remain in Criminal Court for a trial or other type of appearance, what would happen, Competiello indicated that he was unable to provide an answer. In his interview, Respondent spoke about how he grabbed the wrong packet of summonses while he was rushing from Criminal Court to TVB. He confirmed that it is at the discretion of a judge whether or not to grant an adjournment.

Competiello testified that his Commanding Officer decided that Respondent should be served with Department charges because he failed to review the packet of summonses before leaving his command. Competiello did not know if the determination to bring charges was based on the number of cases that were dismissed. He could not answer if Respondent's failure to review the packet would have been considered misconduct had the judge granted adjournments.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a ten-year member of the Department, is currently assigned to the Highway District's Collision Investigation Squad and has been there since May of this year. The purpose of the Collision Investigation Squad is to investigate collisions in which a motorist is seriously injured. An investigation consists of speaking to witnesses, 911 callers, and officers first on the scene; canvassing for video; and ensuring that the computer-generated reconstruction is accurate. Additionally the investigating officer

contacts the victims' families, and completes any necessary paperwork. His response area is primarily Brooklyn but he could work anywhere in the five boroughs if needed.

Prior to his assignment in the Collision Investigation Squad, Respondent had been assigned to Highway Unit 2 in Brooklyn for six years on a solo patrol. His duties there were to conduct patrol, enforce vehicle and traffic laws, and respond to radio calls for various reasons including car accidents, disputes on the highway, and Driving While Intoxicated (DWI) cases. Respondent had received special DWI training and had the additional responsibility of testing motorists arrested for DWI by other officers in Brooklyn. He indicated that throughout his career he has made approximately 150 to 200 arrests. He has testified somewhere between 30 to 50 times in DWI cases.

In his capacity as a Highway Patrol officer, daily enforcement of vehicle and traffic laws was accomplished by issuing summonses. Respondent indicated that he would target those who violated the speed limit and seatbelt laws. He specified that 99 percent of the summonses issued were point violations, and that he wrote a minimum of 70 summonses per month.

Typically, Respondent stated, he had to testify at TVB regarding summonses he issued once a week. Usually he was notified about 20 to 30 summonses for each court date. Respondent would receive notification 10 to 15 days prior to required appearances. Notifications were provided by Respondent's supervisor at the beginning of each tour during roll call. Respondent was required to view, sign, and provide a copy to the desk upon receipt of each notification.

Respondent indicated that it was his duty to prepare for each court date by collecting the summonses from his locker which correlated with summonses listed on the

docket. He explained that he had a separate locker in which he kept all summonses which was organized by year. He is required to maintain all summonses, even the ones that have been adjudicated, and he has bins full of summonses going back to 2003,

Respondent explained that it was not uncommon for a year to pass between the issuance of a summons and the resulting court date. Summonses that had already been adjudicated were marked with the disposition and placed in a File-a-Dex. Summonses for the next court date were placed in a package within the locker. Respondent indicated that it was not uncommon for cases to be postponed due to the absence of a motorist, or because either the motorist or his attorney requested an adjournment. He also explained that sometimes the docket would be very full and the judge would encourage motorists to request an adjournment.

Respondent further explained that while he would be notified regarding 20 to 25 summonses he would only be called on to testify on about half of those. He did know what happened with the others. Motorists may have pled to them prior to the session or they may have been no shows, "I don't know what the disposition is, so I keep them as an active case."

On October 18, 2011, Respondent was scheduled to work an 8:00 a.m. to 4:35 p.m. tour to accommodate required appearances in both Criminal Court (for a DWI trial) and TVB. He had prepared a bundle of summonses for that day in advance. Respondent reported directly to the District Attorney's Office at 350 Jay Street regarding the case in Criminal Court, and was due at the Brooklyn South TVB at 1:00 p.m.

Respondent informed the DA of the TVB appearance upon his arrival.

Respondent explained that he has been notified for Criminal Court many times and often

it is to give the DA an opportunity to speak to him or review paperwork. This time it was different. The DA told Respondent that the DWI trial would most likely begin on that day, and that if true, his appearance in Criminal Court would supersede his appearance in TVB. Respondent was ordered to stand by in the waiting area of the Schermerhorn Street courthouse, (the Criminal Court) where the trial would take place, until further notice.

Respondent stated that it was his understanding that if he had failed to appear at TVB as a result of the DA's directive, he would have informed his Integrity Control Officer, and submit the court slip from Criminal Court, which would justify his absence in TVB.

At 11:30 a.m. the Respondent had still not been called to testify, and was given permission to take a meal break. He told the DA that he would have to proceed to TVB, and was given permission to do so. Respondent departed from the Schermerhorn Street courthouse and went back to the DA's office to collect his vehicle. This took about 15 minutes. Respondent then reported back to his command, a trip which took 45 minutes to one hour. Respondent collected the packet of summonses, and reported to TVB where he was signed in.

On the first case in which Respondent was called to testify, he realized that the summons the judge had called out was not listed on his copy of the docket. He told this to the judge who dismissed that case. In the past, similar situations had occurred, and Respondent assumed that this instance was an administrative error, which he told the judge. When the next case was called, the same thing happened. At this point a lawyer noticed that the date on the packet of summonses was incorrect and informed Respondent. Respondent then informed the judge that he had brought the incorrect

packet of summonses to court, and requested a postponement of the remainder of the cases that were on the docket; which he had successfully done in the past. As each case was called, Respondent repeated his request; however the judge dismissed each of the nine cases. Respondent indicated that it was his understanding that the judge had the final say in such matters, although he was unsure of the particular scope of the judge's discretion.

Following Respondent's testimony, he was required to speak to Garrity in the TVB checkout room. Respondent was provided with a copy of all case dispositions, clocked out, and signed out of the system. Garrity inquired what had happened, and Respondent inquired whether he would need a delegate because of the nature of what had happened which was in close proximity to a recent scandal in the Bronx. According to Respondent, Garrity basically stated, "You can tell me, but if you don't tell me I'm going to notify IAB. If you tell me, maybe there is something we can work, if you made a clerical error, or whatever it may be."

Respondent explained to Garrity that it had been a clerical error. Garrity told Respondent that "mistakes happen" and photocopied the summonses and docket that Respondent had brought with him to court on that day in order to make a record. Respondent inquired whether he should notify his Integrity Control Officer (ICO) because the court monitoring process had been newly implemented and he was unsure of what the proper procedure was regarding the situation. He stated that prior to the implementation of the court monitoring program he believed that there would be no issue. Respondent explained that his command had previously had its own monitoring system in which when an officer received an "N1" or "D8" which are the disposition codes for

dismissal due to an officer's unpreparedness, the precinct ICO would be contacted and provided with the motorist's information. Under the prior system, Respondent had an 88 percent conviction rate which was considered an accomplishment.

At a subsequent official Department interview, Respondent explained the situation at hand to investigators. He testified that once the tape recorder was turned off, the interviewer said that they could see he had made an honest mistake but still must forward the tape up the chain of command.

Respondent argued that although he has admitted that he had failed to bring the correct summonses to court with him on October 18, 2011 which resulted in the dismissal of nine cases, that his conduct over the prior eight to ten years should outweigh the one instance in which he had made a mistake, and felt that his punishment would be fundamentally unfair. Respondent explained that his mistake had caused the potential loss of \$1,050 had motorists' guilt been determined in the nine cases, but that his punishment of 10 vacation days would amount to loss of \$3,500 from his salary. Respondent acknowledged that he had made a mistake, but explained that he did not have malicious intent in any way. He stated that he had acted with honorable intentions, as he always did throughout his police and military careers, with the intent of ensuring motorists' safety.

On cross-examination, Respondent testified that he was released from Criminal Court by the DA at 11:35 a.m. Respondent testified that he had arrived at his command at 12:45 p.m., collected the summons packet for TVB from his locker and reported directly to TVB. He stated the packet had no indication of the date marked upon it, and he did not review the packet before his departure from his command. He indicated that

he would usually leave the package of summonses on top of his locker following his return from court dates and for some reason had not put away the packet from October 4, 2011, which was the packet that he mistakenly brought to TVB with him on October 18. Respondent stated that he felt informal discipline would be more effective than him taking a guilty plea, and felt that a plea would be a black mark on his career record.

Upon further questioning, Respondent clarified that the DA's office and Criminal Court building are both in downtown Brooklyn, and that the office for Highway Unit 2 was located in the southernmost part of Brooklyn. The TVB he had been assigned to was located at Coney Island near the 60 Precinct. Respondent stated that an "N1" dismissal was when a judge found someone not guilty based on insufficient evidence to sustain a charge, despite an officer's testimony.

FINDINGS AND ANALYSIS

The single operative specifications in this case relates to the fact that Respondent was unprepared at TVB resulting in the dismissal of nine summonses involving seven motorists.

The Respondent's explanation for what occurred is simple and straightforward. He had been notified to appear in Criminal Court that day. Obviously, Criminal Court cases are more important than summons cases and he appeared in Criminal Court. When he realized that he probably would not be needed in Criminal Court and that he could make his appointment at TVB he sought out the assistant district attorney on his case and obtained permission to leave the Criminal Court.

He went from Criminal Court to the DA's office which are both in downtown Brooklyn and traveled to his unit, Highway 2, which is at the opposite end of the borough. He hurriedly picked up a pack of summonses and went to TVB in Coney Island, in yet another part of the borough. When he arrived at TVB he realized that he had picked up the wrong pack of summonses. He did not have the correct summonses for the day and the hearing officer declined to grant any adjournments. As a result a number of motorists had their cases dismissed.

Respondent argues that although he clearly made a mistake what occurred does not constitute actionable misconduct. He points out that had he not said anything his appearance at Criminal Court would have likely excused him from appearing at TVB and that, in effect, the summonses would have been dismissed anyhow. He notes that it was only his own diligence that got him excused from Criminal Court and that again, because of his own professional drive he rushed first back to Highway 2 and then to TVB.

Counsel for Respondent was invited to provide case law which would suggest that a mere error is not misconduct. He was unable to do so. The rule is most clearly stated in a decision from the Office of Administrative Trials and Hearing (OATH). In *Transit Authority v. Frost* OATH Index No. 1598/98 (August 26, 1998) a judge of that court noted:

It is a fundamental tenet of civil service law that all public employees are obliged to perform their assigned duties competently and conscientiously and, where their performance is negligent, they can be disciplined. *McGinliglie v. Town of Greenburgh*, 59 A.D.2d 908, 399 N.Y.S.2d 250 (2d Dep't 1977), *rev'd on other grounds*, 48 N.Y.2d 949, 401 N.E.2d 184, 425 N.Y.S.2d 61 (1979); *Bernhard v. Board of Water Supply*, 50 A.D.2d 1061, 376 N.Y.S.2d 279 (4th Dep't 1975);

City of Albany v. PERB, 57 A.D.2d 374, 395 N.Y.S.2d 502 (3d Dep't 1971).

Clearly Respondent's error is a form of neglect of duty and is actionable misconduct. Consequently Respondent is found Guilty of Specification No. 1.

Specification No 2 alleges that Respondent "on or about November 6, 2010, while on-duty, failed to make complete entries regarding the details of a summons in his Department issued memo book, as required."

In amended charges dated September 19, 2012 this specification was dismissed by the Assistant Department Advocate.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

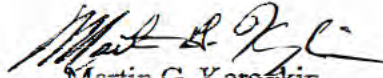
The Department has recommended a penalty involving the loss of 10 vacation days. It is on the issue of penalty that Respondent's argument merits attention. Although the record is not fully established it would appear that if Respondent had remained in Criminal Court his appearance at TVB would have been excused because of the more important and apparently conflicting appearance at that higher court.

Respondent gave unchallenged and credible testimony that he sought out the assistant district attorney and got released from Criminal Court so that he could make his appearance at TVB.

Respondent is an active officer who has had no prior formal discipline whatsoever and who appears to take his responsibilities very seriously. During his testimony in this trial Respondent displayed a noticeable appearance of professionalism and regard for the court process.

Given the totality of the circumstances I recommend that a penalty involving the loss of five vacation days be imposed.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner – Trials

APPROVED
SEP 03 2013

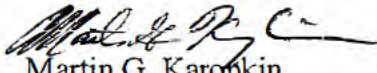
RAYMOND W. KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER COREY FENLEY
TAX REGISTRY NO. 932630
DISCIPLINARY CASE NO. 2012-6944

Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his last three annual performance evaluations. [REDACTED]
[REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner Trials